

Findings and
Recommendations



Connecticut Probate Court System

Adopted January 19, 2006

Legislative Program Review
& Investigations Committee

Introduction

CONNECTICUT PROBATE COURT SYSTEM

In April 2005, the Legislative Program Review and Investigations Committee voted to undertake a study of the state's probate court system. The study focused on the operations and finances of the probate court system and examined whether the current structure is administratively and financially viable.

Over the years, various groups have examined the structure and operations of the probate court system with recurring themes but differing results. Several operational changes have been implemented but the probate courts remain a separate and distinct court system retaining their administrative and fiscal autonomy.

With more than a 300-year history, the Connecticut probate court system is one of the oldest in the nation. Since 1850, probate judges have been elected officials serving the voters of the towns comprising their respective probate districts. Currently, there are 123 probate judges serving four-year terms. The only requirement to serve as a probate judge is to be an elector within the probate district he or she serves.

The traditional probate court function is the administration of decedents' estates or "probating", which is the process of proving that a will is genuine and distributing the property. Probate courts now handle a variety of matters in addition to decedents' estates such as: conservatorships; children's matters including guardianship and temporary custody, termination of parental rights, and adoptions; commitment of mentally ill children and adults; guardianship of persons with mental retardation; and name changes.

The probate court system is structured to be self-supporting without assistance from the state's general revenue. The probate court administrator, appointed by the chief justice of the state Supreme Court, has general oversight of the probate system. For years, projections from the administrator's office have anticipated a financial crisis. Examination of probate court expenses reveals certain categories of expenditures such as health insurance and costs associated with indigent cases have a significant financial impact on the probate system.

Overall, the program review committee found a current lack of administrative controls affects not only the probate finances but also court operations. A need exists for the establishment and enforcement of fiscal accountability and minimum operating standards.

Methodology

In preparing this report, the program review committee staff interviewed a number of individuals including: staff of the Office of the Probate Court Administrator (OPCA), the President of the Probate Assembly, various probate judges representing courts of all sizes, members of the Connecticut Bar Association, and representatives from the Connecticut Council of Small Towns. In addition, a public hearing was held before the program review committee.

Data were collected from various documents prepared or maintained by the Office of the Probate Court Administrator including annual comparative financial reports, individual court income and workload reports, evaluations of court visits, and complaints received by OPCA regarding individual courts. Prior evaluations and proposals about the Connecticut probate courts were examined. Information was also obtained from the National Center for State Courts and the National College of Probate Judges.

Also, two opinion surveys were conducted. One survey was sent to all 123 probate judges and another was mailed to a random sample of 500 attorneys who practice before the probate courts. The judges were asked questions relating to the Office of the Probate Court Administrator and their opinion on a number of items including financing, court operations, and reorganization alternatives. The probate attorneys were asked about their experience with the Connecticut probate courts and to rate the courts' performance. The attorneys were also asked opinion questions on probate fees, court operations, and court jurisdiction. Many of the same opinion questions were posed to both judges and attorneys. (Copies of the surveys with tabulated results, cover letters, and method of random selection are provided in Appendix A.)

Report Format

This report has four sections. Section I examines the current and future financial viability of the probate system and the individual courts. Section II provides an overview of the program review survey results. Section III covers the administration of the courts and management of the Office of the Probate Court Administrator and other related issues. Finally, Section IV discusses the program review committee findings and recommendations as well as the advantages and disadvantages of various alternative approaches to the existing structure.

FINANCIAL VIABILITY

A major focus of the program review committee's study was to examine whether the current probate court structure is financially viable. For the purposes of this study, financial viability is defined as sufficient revenue to cover expenses. This section discusses and provides analysis on current and projected probate court finances.

How courts are financed. Each probate court manages its own finances and pays for its own operating costs.¹ Probate courts are expected to be self-sustaining through the fees charged for their services. The probate courts receive their revenue from fees collected in matters under their jurisdiction (e.g., estates, conservatorships, commitments). Fees are based on statutory fee schedules and/or flat entry fees that are waived in some indigent cases. The costs for settling decedent estates generate the majority of probate fees.

The fees generated by each court, known as gross receipts, are intended to pay for the staff and administrative expenses of the probate court as well as the judge's compensation. After these operating costs are covered, each court is charged a financial assessment paid into the Probate Administration Fund (PAF) to benefit the statewide probate system. A court with insufficient gross receipts to meet its reasonable and necessary operating expenses may request a subsidy from the probate court administrator. Certain operating expenses for the system such as health insurance for active and retired judges and staff and the costs associated with indigent cases are paid from the Probate Administration Fund. In addition, the fund is statutorily required to pay for a variety of expenditures for the operation of the Office of the Probate Court Administrator (OPCA).

State law provides that monies of the General Fund may be drawn upon if the Probate Administration Fund is at any time insufficient to cover its charges. Any monies from the General Fund must be repaid when the Probate Administration Fund is solvent. To date, this has not occurred.

Previous Financial Projections

For a number of years, projections have been made of an impending financial crisis for the probate court system. In 1996, legislation was adopted to phase out Connecticut's succession tax to make the state more competitive. One of the predicted consequences was that when the tax was eliminated, taxpayers would no longer file these returns, thereby also eliminating the basis for the probate courts to generate substantial fee-based income. Anticipated probate revenue reductions were estimated at \$5 million to \$8 million, or as much as 25 percent of the income of the entire system.

¹ Towns that are served by the probate district are statutorily required to provide adequate office facilities but they have no other financial obligation to the court. While some towns provide additional in-kind support such as computers and office equipment to their probate court, there is no tracking of these contributions.

In 1997, probate fees were increased in response to the expected shortage resulting from the succession tax elimination. However, the phase-out of the succession tax did not immediately result in reduced revenues, even though over 90 percent of people who previously would have paid succession tax now longer needed to. People continued to file tax returns with the probate courts because decedents' estates needed to clear title to real estate. As a result, large fees were generated for the courts securing a continued source of revenue to the probate system. At the same time, the 1997 probate fee increases provided system-wide surpluses. By 2003, the probate system had a surplus significant enough that the legislature took \$15 million from the Probate Administration Fund for the General Fund.

Since 2004, the financial projections from the Office of the Probate Court Administrator have been somewhat volatile. The OPCA October 2004 reorganization plan predicted a systemic deficit of \$579,000 in 2004 followed by a \$1.5 million deficit for 2005. In September 2005, this projection was revised to a \$500,000 surplus. A month later, the probate court administrator testified at a program review committee that the surplus would more likely be over \$800,000.

This volatility, in part, is reportedly due to the different reporting schedules of probate finances. Individual court income and expense reports are compiled on a calendar year basis while the Probate Administration Fund financials are reported on a fiscal year basis. According to the probate court administrator, these figures change as the final financial audits of each court are completed.

At the program review committee's October 2005 public hearing, the Office of the Probate Court Administrator submitted its most recent financial projections for the probate court system. A copy of the original spread sheet is provided in Appendix B. The spreadsheet, combining both calendar and fiscal year information, contained a number of assumptions regarding expense increases. Closer examination of the spreadsheet revealed some minor mathematical errors and inconsistent application of assumptions. Therefore, program review prepared its own spreadsheet separating calendar and fiscal year data and adjusting the application of a few of the assumptions. A discussion of this information is provided below.

Current Probate Financial Condition

As noted above, funding for the probate court system is managed in a two-part process. First, each individual court manages the gross receipts it generates to pay for its operating expenses (staff salaries, office expenses, and judge's compensation) on a calendar year cycle. Second, the unspent gross receipts are sent to the Probate Administration Fund to cover a variety of system expenses on a fiscal year cycle. Consequently, the program review committee examined the revenue and expenditures of each separately.

Program review examined the amount of gross receipts generated by all 123 probate courts as a whole compared to the operating expenses of the courts. Operating expenses include staff salaries, administrative costs (not including in-kind support from the municipalities), and judicial compensation. A summary of this information for calendar years 2000 to 2004, the last year for which there are actual audited figures, is presented in Table I-1.

Table I-1 also shows the PAF activity during FYs 2000-04. The PAF pays for health insurance costs for active and retired probate staff; costs associated with indigent cases; and “other PAF expenses” including Office of the Probate Court Administrator expenses as well as special projects (e.g. regional children’s court).

Table I-1. Connecticut Probate Court System Finances (2000 through 2004)					
Calendar Year	2000	2001	2002	2003	2004
Gross Receipts	\$23,724,000	\$24,664,000	\$25,004,000	\$25,957,000	\$26,883,766
Court Expenses:					
Staff salaries	6,940,000	7,366,000	7,780,000	8,256,000	8,625,793
Judges Compensation	5,909,000	6,195,000	6,518,000	6,439,000	6,618,256
Other administrative court expenses	2,160,000	2,256,000	2,302,000	2,498,000	2,293,404
<i>Subtotal of Expenses</i>	15,009,000	15,817,000	16,600,000	17,193,000	17,537,453
Addition/Subtraction	\$8,715,000	\$8,847,000	\$8,404,000	\$8,764,000	\$9,346,313
PAF Activity	FY 00	FY 01	FY 02	FY 03	FY 04
Beginning PAF balance	17,198,560	21,290,560	25,988,110	14,533,362*	16,623,048
Incoming Receipts	9,587,000	10,536,550	10,195,252	9,860,856	10,138,162
Total Available PAF	\$26,785,560	\$31,827,110	\$36,183,362	\$24,394,218	\$26,761,210
PAF Expenses					
Health insurance (Active)	1,491,000	1,563,000	1,792,000	2,028,000	2,308,900
Health insurance (Retire)	979,000	991,000	1,137,000	1,369,000	1,704,662
Indigent costs	742,954	814,622	1,054,393	1,515,236	1,794,552
Other PAF expenses	2,282,046	2,470,378	2,666,607	2,858,934	2,895,784
Total PAF EXPENSES	\$5,495,000	\$5,839,000	\$6,650,000	\$7,771,170	\$8,703,898
Ending PAF Balance	\$21,290,560	\$25,988,110	\$29,533,362	\$16,623,048	\$18,057,312
Addition/Subtraction to PAF	\$4,092,000	\$4,697,550	\$3,545,252	\$2,089,686	\$1,434,264
*Transfer of \$15,000,000 Into General Fund					
Source: LPR&IC analysis					

As the table shows, *the 123 probate courts, to date, have collectively generated sufficient gross receipts to cover their operating expenses.* (Further analysis concerning each individual court’s ability to remain financially viable is provided later.) In addition, *the PAF has, at least through 2004, spent less than incoming receipts, allowing the principal balance in the fund to grow. Therefore, the probate court system at present is self-sustaining.*

Future Projections

Following this same format, the program review committee prepared its own projections using certain data and assumptions provided by the probate administrator as well as developing and adjusting others. As mentioned earlier, the financial statements for each individual court are based on calendar years. As such, the actual figures for 2005 are not available. Therefore, it was

necessary to make certain assumptions, based on available historical and recent data, to project future financial data.

It is important to note that even a small change in assumptions may make a significant difference. For example, the program review committee used a conservative assumption of a 2 percent annual increase in gross receipts after FY 05. However, the growing demographic of aging Connecticut residents may impact the number of decedent estates and conservatorships the probate courts will handle in the future, making the actual increase in gross receipts much higher.

The program review assumptions are as follows:

For the calendar year analysis:

- gross receipts increase at a rate of 2 percent annually; (same as OPCA)
- staff salaries increase at a rate of 5 percent annually; (OPCA assumes 3 percent for FYs 05 and 06 then assumes 5 percent for FY 07 forward)
- other court expenses increase at a rate of 3 percent annually; (same as OPCA) and
- judges' compensation increase at a rate of 5.5 percent annually. (same as OPCA)

For the fiscal year analysis:

- Beginning in FY 06, incoming PAF receipts equal the average of the local courts' surplus from the two calendar years that are included in the fiscal year. This would take into account the six-month difference between the calendar year and the fiscal year.
- Interest income equals 2 percent of prior year's ending fund balance. (OPCA uses 1 percent)
- Health insurance costs for active and retired staff increase 12 percent each annually. In FY 05, the health insurance cost for retirees contains a payment of \$477,285 for underpayment of prior years' health insurance. (same as OPCA)
- Indigent costs increases 5 percent annually after FY 05. Indigent costs increased substantially in FY 05 due to a recent reimbursement rate increase for lawyers and conservators representing indigent cases. (same as OPCA)
- Other PAF expenses, which include the operating expenses for the Office of the Probate Court Administrator, increase 3 percent annually. (OPCA assumes 5 percent)

Based on the program review assumptions, the 123 probate courts as a whole will continue to generate sufficient gross receipts to cover their basic operating costs through 2010. However, their growing expenses in the upcoming years will mean less income going into the Probate Administration Fund for other system costs. As a result, the combination of decreasing revenue into PAF and growing expenses will likely produce financial problems for the fund by FY 2010.

Table I-2. Connecticut Probate Court System Finances (2004 through 2010)							
Calendar Year	2004	2005	2006	2007	2008	2009	2010
Gross receipts	\$26,883,766	\$27,421,441	\$27,969,870	\$28,529,268	\$29,099,853	\$29,681,850	\$30,275,487
Court Expenses							
Staff salaries	8,625,793	9,057,083	9,509,937	9,985,434	10,484,705	11,008,941	11,559,388
Judges compensation	6,618,256	6,965,140	7,348,222	7,752,374	8,178,755	8,628,587	9,103,159
Other court expenses	2,293,404	2,362,206	2,433,072	2,506,064	2,581,246	2,658,684	2,738,444
<i>Subtotal of Expenses</i>	17,537,453	18,384,429	19,291,231	20,243,872	21,244,707	22,296,211	23,400,991
Surplus/(Deficit)	\$9,346,313	\$9,037,013	\$8,678,639	\$8,285,395	\$7,855,146	\$7,385,639	\$6,874,496
PAF Activity	FY 04	FY 05**	FY 06	FY 07	FY 08	FY 09	FY 10
Beginning PAF balance	16,623,048	18,057,312	18,932,779	16,650,861	13,071,150	8,045,796	1,412,259
Incoming receipts	10,138,162	11,685,335	8,857,826	8,482,017	8,070,271	7,620,392	7,130,067
Interest Income	*	386,883	378,656	333,017	261,423	160,916	28,245
Total Available PAF	\$26,761,210	\$30,129,530	\$28,169,260	\$25,465,896	\$21,402,844	\$15,827,104	\$8,570,571
PAF Expenses							
Health Ins. (Active)	2,308,900	2,616,279	2,930,232	3,281,860	3,675,684	4,116,766	4,610,778
Health Ins. (Retire)	1,704,662	2,555,813	2,327,951	2,607,305	2,920,182	3,270,604	3,663,076
Indigent costs	1,794,552	2,740,848	2,877,890	3,021,785	3,172,874	3,331,518	3,498,094
Other PAF expense	2,895,784	3,283,811	3,382,325	3,483,795	3,588,309	3,695,958	3,806,837
Total PAF EXPENSES	\$8,703,898	\$11,196,751	\$11,518,399	\$12,394,746	\$13,357,048	\$14,414,845	\$15,578,784
Ending PAF Balance	\$18,057,312	\$18,932,779	\$16,650,861	\$13,071,150	\$8,045,796	\$1,412,259	(\$7,008,213)
Difference between Beginning and Ending PAF balance	\$1,434,264	\$875,467	(\$2,281,918)	(\$3,579,711)	(\$5,025,355)	(\$6,633,537)	(\$8,420,472)
*Interest income is included in FY 04 incoming receipts.							
** PAF activity figures for FY 05 are actual.							
Source: LPR&IC analysis							

The projections of the Office of the Probate Court Administrator, provided in Appendix B, also concluded there would be future financial problems for the Probate Administration Fund. However, the probate administrator's method of projection suggests the financial problems of the Probate Administration Fund will begin about a year sooner (FY 2009) than the program review estimates. OPCA predicts the Probate Administration Fund will have a deficit of \$6.2 million in FY 09 followed by a \$15.9 million deficit in 2010. The program review analysis projects the Probate Administration Fund will still be solvent in FY 09 but will experience a deficit of \$7 million in 2010. The difference appears to be due to the different treatment of the calendar/fiscal year information and application of assumptions.

Financial Condition of Individual Courts

As noted above, the probate courts collectively have been able to generate sufficient revenue to pay for their operating expenses, as well as contribute significantly to the PAF. In 2004, there were \$26.8 million in gross receipts generated by the whole probate court system with operating costs for the individual 123 courts of \$17.5 million (not factoring in health insurance costs of current staff and judges). Following this practice, an examination of the 2004 annual gross receipts and operating costs of each district reveals there were three courts (Bridgeport, West Haven, and Norfolk) that did not generate sufficient revenue to cover their operating costs. Since 1996, the cost of each court's share of health insurance for judges and clerks has been totaled and shown as a business expense against the Probate Administration Fund.

If health insurance costs were considered part of individual court operating expenses, there would be significantly more individual districts with total operating expenses exceeding their gross receipts. An examination of the individual courts' 2004 gross receipts and total operating costs including insurance costs is provided in Table I-3. As the table shows, 74 courts generate sufficient gross receipts to absorb their own health insurance costs but one-third (41) of the courts do not. In essence, those 41 courts are subsidized by the revenues of the remaining courts. The 41 courts include three high volume courts with populations of more than 70,000; 17 medium and small-sized courts with populations between 10,000 and 70,000; and 21 courts with populations less than 10,000. Furthermore, there are eight additional courts that appear to be within 5 percent of not covering their operating costs.

Table I-3. Probate Courts With and Without Sufficient Gross Receipts to Cover Health Insurance Costs				
Court Size	Gross receipts <u>can</u> absorb health insurance costs	Gross receipts <u>cannot</u> absorb health insurance cost	Within 5 percent	Total
High Volume (Populations over 70,000)	6	3	1	10
Medium (Population between 30,000 and 69,999)	24	3	2	29
Small (Population between 10,000 and 29,999)	27	14	4	45
Extra Small (Population less than 10,000)	17	21	1	39
Total	74	41	8	123
Source: LPR&IC analysis				

The probate system became part of the state's health insurance plan in 1996. All probate court employees and judges were given the same medical benefits as state employees with the cost of providing this coverage added to PAF expenses. At that time, PAF was thought to be sufficient to cover the 100 percent of the basic premiums for probate judges and staff and 50 percent of the premium for dependents. Since that time, health insurance costs have increased for the general public including members of the state plan. If the state makes any changes to its plan, the probate system will also be affected by whatever the state implements. Nevertheless, *the health insurance costs at present are one factor impacting the stability of the probate fund.*

In summary, almost all probate courts are currently financially viable (i.e. able to cover their operating costs). Only three probate courts require financial assistance from the Probate Administration Fund. However, if the health insurance costs are considered part of the individual court's operating expenses, significantly more probate courts (at least 41) would be financially not viable. These courts are presently being subsidized by the other probate courts through the Probate Administration Fund.

Analysis of Financial Condition of Probate Courts by Population

The program review committee also examined the probate courts' financial situation by population size. The 123 districts were divided into groups of 20 in descending order of population. This resulted in six groups with the last group containing 23 districts. A list of these groups is provided in Appendix C.

The committee then compared the groups by total and percentage of gross receipts, staff salaries, administrative costs, judges' compensation, and health insurance costs. Table I-4 provides the results of the analysis. In general, all the variables decrease as the size of the court decreases.

Table I-4. Comparison of Finances of Probate Courts by Population Size							
	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	TOTAL
Population	1,635,192	812,126	458,086	294,402	173,428	87,269	3,460,503
Number Courts	20	20	20	20	20	23	123
Gross Receipts	\$12,391,208 (46%)	\$5,520,405 (21%)	\$4,296,491 (16%)	\$2,415,646 (9%)	\$1,334,044 (5%)	\$925,972 (3%)	\$26,883,766
Court Expenses							
Staff Salary	\$4,794,221 (56%)	\$1,777,684 (21%)	\$1,131,900 (13%)	\$543,464 (6%)	\$264,261 (3%)	\$114,263 (1%)	\$8,625,793
Judges' Compensation	\$1,798,883 (27%)	\$1,342,222 (20%)	\$1,268,889 (19%)	\$1,021,986 (15%)	\$676,426 (10%)	\$493,622 (7%)	\$6,6618,256
Other Court Expenses	\$1,207,451 (53%)	\$528,784 (23%)	\$252,144 (11%)	\$164,423 (7%)	\$71,076 (3%)	\$69,527 (3%)	\$2,293,404
Total Expense (without health insurance cost)	\$7,800,555 (45%)	\$3,648,689 (21%)	\$2,652,933 (15%)	\$1,729,873 (10%)	\$1,011,763 (6%)	\$677,412 (4%)	\$17,521,226
Health Insurance	\$810,095 (37%)	\$442,439 (20%)	\$325,901 (15%)	\$255,961 (12%)	\$192,677 (9%)	\$168,566 (8%)	\$2,181,801
Total Expense (including health insurance cost)	\$8,610,650 (44%)	\$4,091,129 (21%)	\$2,978,834 (15%)	\$1,985,833 (10%)	\$1,204,440 (6%)	\$845,978 (4%)	\$19,719,254
Assessment paid to PAF	\$4,662,412 (49%)	\$1,871,715 (20%)	\$1,643,556 (17%)	\$685,773 (7%)	\$322,281 (3%)	\$256,183 (3%)	\$9,346,313
Source: LPR&IC analysis							

Similar to the finding above, each group generates sufficient revenue to cover its expenses. However, the 80 largest courts (Groups 1-4) generate 92 percent of the gross receipts. The remaining 43 courts generate 8 percent of the gross receipts. In addition, the 80 largest courts (Groups 1-4) provide 93 percent of the assessments paid to the PAF, while the remaining two groups (48 courts) provide 6 percent of the assessments.

Another way to examine this financial information is to compare a court's expenditures to the output it produces. For probate courts, the commonly measured product is the weighted workload.² The program review committee calculated the total cost per weighted workload unit for each individual court. (Total cost includes staff salaries, administrative costs, judge's compensation, and health insurance.) As mentioned above, the courts were categorized by size into six groups of 20 with the last group having 23 courts. The results, presented in Table I-5, provide the range and median of each group.

Table I-5. Comparison of Weighted Workload and Total Cost of Probate Court by Population Size.							
Group Size	1	2	3	4	5	6	TOTAL
Number of Courts	20	20	20	20	20	23	123
Population Size	1,635,192	812,126	458,086	294,402	173,428	87,269	3,460,503
Total Weighted Workload (WWL)	133,539 (51%)	58,447 (23%)	32,242 (12%)	17,466 (7%)	11,109 (4%)	6,872 (3%)	259,675
Insurance NOT included in Total Cost							
Total Cost per WWL unit Range	\$40.20-89.08	\$46.37-131.75	\$50.09-154.24	\$64.25-141.82	\$11.74-142.47	\$31.30-217.64	\$11.74-217.64
Median	\$58	\$57	\$79	\$105	\$93	\$96	\$82
Insurance included in Total Cost							
Total Cost Per WWL unit Range	\$45.16 - 100.45	\$54.76-148.39	\$58.68-163.91	\$64.25-171.78	\$27.39-190.42	\$31.30-290.62	\$27.39-290.62
Median	\$66	\$65	\$92	\$116	\$107	\$126	\$95
Source: LPR&IC analysis							

As the table shows, the weighted workload decreases as court size decreases. The 80 largest courts (Groups 1-4) have 93 percent of the weighted workload. The remaining 43 courts have 7 percent of the workload. Overall, the system's median cost per unit of weighted workload is \$82 when not factoring in health insurance costs and \$95 per unit of weighted workload when health insurance costs are added. The cost per weighted workload unit decreases as the court size increases. Further analysis by court size is provided below.

In summary, when the probate courts are compared by size, the analysis finds that the 80 largest courts generate the largest percentage of gross receipt (92 percent); pay most of the financial assessments to the Probate Administration Fund (93 percent); and carry the majority

² In general, the weighted workload is the total number of each probate court matter multiplied by a rating of 1 through 5 assigned by the administrator for the level of difficulty.

of the weighted workload (93 percent). At the same time, the median total cost per weight workload unit of the 43 smallest probate courts is higher than the statewide median.

Judge's compensation. A probate judge's allowable compensation is subject to a statutory formula. The formula uses weighted workload as part of the compensation calculation. The statute establishes minimum and maximum compensation rates.³ Generally, a judge's compensation is the lowest of the maximum range but the highest of the minimum range. In addition, probate judges of high volume courts, statutorily defined as districts having a population of 70,000 or more, may receive compensation equal to the court's net income (i.e., the amount remaining after staff and administrative costs are paid) but not more than 75 percent of the salary of a superior court judge.

Throughout the study, the committee often heard concerns about probate judges receiving substantial compensation for relatively few hours of work. It is important to note that probate judges are not compensated by the hours worked but rather by a combination of volume and type of matters they handle. The concept of the weighted workload was conceived in the late 1990s to address what was then viewed as disparities between workload and compensation among districts.

Program review examined judge compensation per unit of weighted workload. (Health insurance costs are not included in the judge's compensation.) As shown in Table I-6, the system's total median weighted workload is 1,094 and the total median judges' compensation is \$55,076. Both the median weighted workload and median judges' compensation decreases as the court size decreases. However, the median judge's compensation per unit of weighted workload increases as the court size decreases.

Table I-6. Comparison of Weighted Workload and Judges' Compensation by Population Size.

Group Size	1	2	3	4	5	6	TOTAL
Number of Courts	20	20	20	20	20	23	123
Population Size	1,635,192	812,126	458,086	294,402	173,428	87,269	3,460,503
Weighted Workload (WWL)	133,539 (51%)	58,447 (23%)	32,242 (12%)	17,466 (7%)	11,109 (4%)	6,872 (3%)	259,675
Median WWL	6,056	2,933	1,413	817	564	239	1,094
Judges Compensation	\$1,798,883 (27%)	\$1,342,222 (20%)	\$1,268,889 (19%)	\$1,021,986 (15%)	\$676,426 (10%)	\$493,622 (7%)	\$6,6618,256
Median Judges Compensation	\$93,750	\$69,000	\$63,041	\$51,277	\$31,899	\$18,936	\$55,076
Range of Judges Compensation per WWL unit	\$6.1-30.2	\$10.1-45.8	\$18.2-63.6	\$33.1-74.8	\$11-117.1	\$27.8-205.4	\$6.1 to 205.4
Median Judges Compensation per WWL unit	\$15	\$22	\$40	\$66	\$70	\$72	\$45
Source: LPR&IC analysis							

³ The annual minimum compensation for a probate judge is the court's weighted workload multiplied by \$15 or the judge's three-year average compensation. The annual maximum compensation is the court's weighted workload multiplied by \$72 but cannot be more than 75 percent of the amount of salary of a superior court judge.

As the table shows, the median judges' compensation per weighted workload unit reflects the minimum and maximum allowable compensation of the statutory formula. *Although the judges' compensation was set by statutory formula to address disparities in workload, the present system still produces considerable variation among the individual judges' compensation.* For example, the Hartford probate judge received the maximum statutory compensation available to a high volume court (\$93,750) for his district's 2004 weighted workload of 15,386. Because of the statutory cap and the size of the weighted workload, Hartford has the lowest judge cost per weighted workload unit (\$6). Meanwhile, the Norfolk probate judge received \$32,249 in compensation for the court's 2004 weighted workload of 157 giving Norfolk the highest judge cost per unit of weighted workload (\$205). As noted earlier, this "judge cost" does not include the 100 percent health insurance provided to the judge.

Given the need to control system expenses and the current statutory formula produces significant differences in judicial compensation from court to court, the program review committee recommends that **the Office of the Probate Court Administrator, in consultation with the executive committee of the Probate Assembly, shall obtain the services of an independent professional financial consultant to develop a mechanism for judicial compensation taking into account the health insurance and retirement benefits provided to judges under current law as well as the time and skills reasonably necessary to perform their judicial duties. A final report shall be submitted to the Chief Court Justice no later than September 1, 2006. Any changes requiring statutory revisions shall be proposed in the 2007 legislative session.**

Probate Administration Fund (PAF) Expenditures

As mentioned earlier, the Probate Administration Fund is statutorily required to pay for a variety of expenditures for the operation of the Office of the Probate Court Administrator and for services provided to the probate district courts. In addition to health insurance costs, there are two other major expense categories for the fund: costs related to indigent cases and the operation of the Office of the Probate Court Administrator.

Costs related to indigent cases. The Probate Administration Fund pays attorneys who represent indigent persons in probate matters, reimburses courts for entry fees that are waived in indigent cases, provides payments to conservators appointed to indigent individuals, and covers other professional costs associated with these cases such as marshals and newspaper notices.

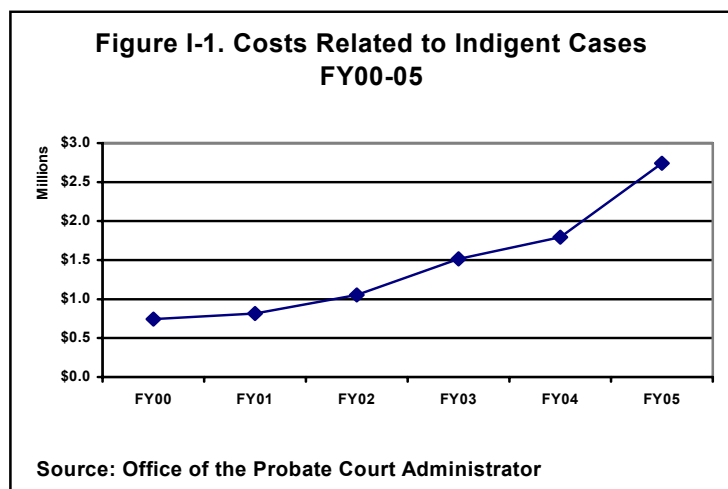


Figure I-1 charts the costs for indigent cases since FY 00. The total cost for indigent cases has more than tripled since FY 00. During this time period, the amount of fee waivers has almost doubled while the costs for counsel fees and other professional services have experienced the greatest growth. In FY 05, the costs for indigent cases grew another \$1 million due in part to an increase in the reimbursement rate of counsel fees.

The responsibility for these payments was previously carried by the General Fund but was transferred to the Probate Administration Fund in 1996. State law still allows funds from the Judicial Department to be used to pay the costs for indigent services, but the probate fund must cover expenses if there are no appropriated funds to the Judicial Department for this purpose. In 1999 and 2000, the General Fund provided \$500,000 for these costs. However, due to the large balance in the probate fund, the appropriation was eliminated completely in subsequent budget proposals.

Given the program review committee believes there should be reconsideration of this policy given the significant growth in this expense category. The financial burden of indigent cases is a statewide issue that should be addressed with general state funds through the Judicial Department rather than financed solely by the users of the probate system. While recent expenditures for indigent cases may provide some insight to projected increases, the future growth of these expenses is not known. Unlike staff compensation and related health insurance costs, the costs related to indigent cases are outside the control of the probate court judge and are unpredictable. *The inclusion of indigent costs in the Probate Administration Fund, like health insurance costs, may eventually impact the fund's ability to remain self-sustaining.* Therefore, the program review committee recommends **the costs related to indigent cases shall be paid from the state's general revenues.**

Other PAF expenses. The Probate Administration Fund is also responsible for a variety of other expenses managed through the Office of the Probate Court Administrator. These expenses include the cost of operating the OPCA, certain services for the individual courts such as computerization and educational seminars, and all expenses of the Council on Probate Judicial Conduct.

Program review examined the operating budget of the Office of the Probate Court Administrator, separating the costs for services provided to the individual courts such as education seminars, subsidies, and costs related to the Council on Probate Judicial Conduct. Table I-7 provides this analysis from FY 2000 to 2005.

As the table shows, *the total operating expenses for the Office of the Probate Court Administrator demonstrated a modest growth between FY 2000 and FY 2003 but increased substantially from FY 2003.* In FY 2004, the total operating expenses for the Office of the Probate Court Administrator increased 19 percent while a 15 percent increase occurred in FY 2005. Since FY 03, the areas with the most growth are staffing costs (including contractual employees), pilot programs, and other administrative expenses. A significant increase was also evident in the expenses related to services for the individual courts. Computerization for the individual courts and court operating subsidies experienced the most growth. (Computerization of the individual courts is discussed further in Section II.)

Table I-7. Other Probate Administration Fund Expenses (FY 00 through FY 05)						
Operating Expenses of the Office of the Probate Court Administrator	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal services	\$737,297	\$773,069	\$831,582	\$836,541	\$917,798	\$992,809
Fringe benefits	\$305,293	\$331,621	\$374,076	\$358,687	\$434,910	\$535,165
Professional fees (Contractual)				\$54,265	\$108,402	\$186,790
Non-professional fees: temp help		\$3,852	\$6,603	\$31,089	\$10,788	\$6,275
Data processing (OPCA only)	\$388,074	\$328,713	\$302,164	\$223,702	\$229,417	\$201,265
Other administrative expenses*	\$251,011	\$244,281	\$274,114	\$273,895	\$237,409	\$348,317
Pilot programs		\$43,200	\$42,134	\$100,000	\$289,247	\$291,034
TOTAL OPERATING EXPENSES	\$1,681,675	\$1,724,736	\$1,830,673	\$1,878,179	\$2,227,971	\$2,561,655
<i>Percent Growth from the prior year</i>		3%	6%	3%	19%	15%
Services for Individual Courts						
Judges seminars & education	\$36,731	\$38,732	\$42,255	\$28,975	\$29,534	\$28,271
Council on Judicial Probate Conduct	\$34,208	\$53,083	\$58,756	\$58,891	\$63,441	\$58,571
Court subsidies	\$11,500	\$84,673	\$30,000	\$161,043	\$130,784	\$98,656
Computerization – courts	0	0	0	\$675,620	\$209,526	\$536,658
Total	\$82,439	\$176,488	\$131,011	\$924,529	\$433,285	\$722,156
<i>Percent Growth from the prior year</i>		114%	(26%)	606%	(53%)	67%
*Includes building maintenance, rental storage for probate records, furnishing, office equipment and supplies, and other office related functions.						
Source: LPR&IC analysis						

Use of contractual staff. In August 2005, the Office of the Probate Court Administrator had a staff of 16 permanent employees and 12 contractual workers. As of December 2005, the staff increased to 19 permanent employees and 18 contractual workers. The three new permanent employees include two attorneys in the legal division to replace the former chief of staff and one administrative employee in the financial division. According to the probate administrator, the six additional contractual workers are part-time auditors to fill the position of the former financial administrator. As a result, there is almost an equal number of permanent and contractual staff.

Pilot programs. Another area within the category of other probate expenses that has experienced significant growth is pilot programs. In FY 01, there was one pilot program with a total of \$43,200 in expenses. In FY 05, there were two pilot programs with expenditures totaling \$291,034. The majority of these expenses are related to the children's regional probate court. The other smaller pilot project, Melissa's Project, is aimed at individuals with mental illness.

A recent evaluation report of the New Haven regional children's court found that the quality of comprehensive services provided by the regional children's court far exceeds the ability of local probate courts in case management, family involvement, addressing service needs, and linking families with community services.⁴ Support for this program is evident in that the legislature authorized expansion during the 2005 session before the evaluation report was issued. In addition, 79 percent of the 94 probate judges responding to the committee survey

⁴ The evaluation report was prepared by staff of Casey Family Services which also recommended the creation of the regional children's probate court. Concerns have been expressed to the program review committee about at least the perception of bias that arises from this kind of relationship.

indicated that in theory the regional children court was a good model. However, the judges' opinions were evenly divided when asked whether revenues from the probate fees should be used to fund special projects such as the regional children's court or mental health projects.

Survey Results				
JUDGES RESPONSES	Strongly Agree	Agree	Disagree	Strongly Disagree
In theory, a regional children’s probate court model is a good concept. (N=94)	22%	57%	14%	6%
	79%		20%	
Revenues generated from probate fees should be used to fund special projects such as the regional children’s probate court or mental health projects. (N=91)	15%	35%	27%	22%
	50%		49%	
Source: LPR&IC survey				

Although the legislature directed the creation of six additional courts effective October 1, 2005, no written implementation plan has yet been developed. Initial steps have been taken to expand the program without an implementation plan. In addition, there has been no itemized budget of the anticipated costs. For example, the total expenditures for the New Haven regional children's probate court have been publicized as \$174,150 in FY 05.⁵ However, this figure does not reflect the costs of the four probate clerks and two probate court officers working for the children's court but paid by the probate district courts involved in the pilot program. In addition, the total expenses do not include the six social workers and a supervisor paid by the Department of Children and Families. As such, the actual cost for operating the New Haven regional children's court is substantially higher. Based on the children's court most recent budget, the total operating cost is \$536,578 (not including the DCF employees).

Given the potential impact these new additional courts may have on the probate administration fund, the program review committee recommends **not later than May 31, 2006, the Office of the Probate Court Administrator shall submit to the committees of cognizance of the General Assembly a written report on the experience of the regional children's probate court in New Haven.**

The Office of Probate Court Administrator shall develop a written implementation plan, in consultation with the Department of Children and Families, identifying the possible probate districts that may be considered for additional children's probate courts pursuant to P.A. 05-225. The plan will describe the selection process for participating towns as well as a process for establishing the towns' desire to participate. The plan will also outline anticipated costs based on the experience of the regional children's probate courts already in place, and describe the roles of those other agencies involved in the proposed courts initiatives such as the Department of Mental Health and Addiction Services and the Department of Children and Families, and whether those agencies should be financially contributing to the operation of these proposed courts who are benefiting their clients. No additional regional children's probate courts shall be established beyond the two existing ones until the written implementation plan is submitted to the committees of cognizance of the General Assembly.

⁵ Annual Report of the New Haven Regional Children's Probate Court, 2005

Conclusions

Based on the financial projections made through 2010, the program review committee finds that financial controls must be established to keep probate expenditures reasonable and to maintain a financially viable system. The committee recommendations made above (e.g. changes in judicial compensation and responsibility of indigent costs transferred to the state's general revenues) will provide some fiscal stability. However, the program review committee believes fiscal accountability should be further strengthened. The need to curb probate expenses should include the expenditures of the administrator's office. Therefore, the program review committee recommends that **the growth in the Office of the Probate Court Administrator's operating budget shall be capped at the previous year's growth in the Probate Administration Fund. Further, the independent audit of the Probate Administration Fund shall be submitted to the legislative committees of cognizance.**

Probate fees. The self-sustaining nature of the probate court system depends largely on the revenue collected in association with decedents' estates. Until recently, the costs for settling a decedent's estate were based on, among other things, the gross estate for succession tax purposes. The succession tax was eliminated during the 2005 legislative session, and a new gift and estate tax was established. A subsequent combination of legislative changes during the 2005 special sessions now requires a decedent's estate to pay a Connecticut estate tax measured by the amount of the decedent's Connecticut taxable estate. The Connecticut taxable estate is the sum of:

- Connecticut taxable gifts made by the decedent during all calendar years beginning on or after January 1, 2005; **and**
- The decedent's gross estate less allowable deductions as computed for federal estate tax purposes (even if no federal estate tax return was required).

This sum includes the value of all the decedent's property at the time of death, including real property and tangible and intangible property. As a result, probate fees are now imposed on all non-probate assets, including jointly held bank accounts, individual retirement accounts, pensions, life insurance, and out-of-state property.

If the decedent's Connecticut taxable estate is more than \$2 million, the executor or administrator is required to file a Connecticut estate and gift tax return with the state Department of Revenue Services and a copy with the probate court having jurisdiction of the estate.

If the decedent's Connecticut taxable estate is \$2 million or less, the executor or administrator of the decedent's estate is required to file a Connecticut estate tax return for nontaxable estates with the probate court having jurisdiction of the estate. Non-taxable estates do not file returns with the Department of Revenue Services. The probate judge reviews the return and is responsible for issuing the Certificate of Opinion of No Tax. The probate court will also issue a certificate of release of estate tax lien where the amount of a decedent's Connecticut taxable estates is \$2 million or less.

During the committee's public hearing, several individuals testified about the impact the new changes have had on the calculation of probate fees. Program review examined two examples cited in the public hearing testimony including:

Example One:

Husband and wife have jointly owned assets consisting of a home worth \$150,000; \$100,000 in life insurance; and \$6,500 in a joint checking account. The husband dies.

Although there is no estate tax due (under \$2 million), the wife must file estate tax return with the probate court and pay a probate fee of approximately \$427. Under the former calculation for decedent's estates which excludes life insurance, this fee would have been \$252.

Example Two:

Man dies with \$5 million in assets, all held in trust. Assets held in trust require no probate court services; the trustee handles everything. Tax return is filed with the Department of Revenue Services and a copy filed with the probate court which collects a fee of \$12,500.

The impact of the new calculation for decedents' estates was also a concern noted on many of the survey responses. Fifty-five percent of the judges responding to the committee survey indicated they felt the calculation of decedent's fees required revision. In addition, 35 percent of the probate attorneys responding to the program review survey believe the current method of calculating probate fees for decedents' estates is unfair.

An informal survey of probate fees in 30 other states shows that 23 states charge a flat filing fee regardless of the size of the matter. Nine states apply a percentage or graduated fee. One state, Rhode Island, exempts the value of real estate. In addition, most states, including Connecticut, have additional charges for extra hearings, copies, or certificates. Of the 30 states surveyed, Connecticut was the only state that imposes probate fees on all non-probate assets.

Committee believes *the recent legislative changes regarding the calculation of probate fees for decedent estates may have resulted in an unintentional impact*. Given its recent passage, the full magnitude of these changes is not yet known. Program review believes the effect of the new calculation for decedent's estates should be reconsidered. The Office of Fiscal Analysis plans to examine this issue in more detail in preparation for the upcoming 2006 legislative session.

Another concern noted in the committee survey was the adequacy of the \$150 application or entry fee. Sixty-five percent of the 94 judges responding to the committee survey felt the probate fee structure (\$150 filing fee) needed revision. The majority of these judges believed the filing fees should be higher. Some respondents suggested raising the fee to what the superior court charges which is \$225. However, 87 percent of the 239 probate attorneys responding to the program review survey indicated the probate court filing and processing fees were fair. As noted in earlier, the probate entry fee was increased from \$100 to \$150 in 1997 to offset the anticipated loss of revenue from the phasing out of the succession tax. The program review committee believes another increase in light of the recent changes seems excessive.

Section II

SURVEY OF PROBATE JUDGES AND ATTORNEYS

As part of its study, the program review committee conducted two opinion surveys. One survey was sent to all 123 probate judges and another was mailed to a random sample of 500 attorneys who practice before the probate courts. Both groups were asked opinions on a number of items including court administration and operations. This section summarizes the survey results. (Survey responses to specific issues are discussed, where relevant, in the next two sections.)

Probate Judge Survey

Ninety-four responses were received from the 123 probate judges for a 76 percent response rate. The breakdown of the respondents by court size is provided in Table II-1.

Table II-1. Number of Survey Responses by Court Size			
Size of Court	Number of courts	Number Responding	Response Rate
High Volume (Population over 70,000)	10	6	60%
Medium (Population between 30,000 and 69,999)	29	25	86%
Small (Population between 10,000 and 29,999)	45	36	80%
Extra Small (Population less than 10,000)	39	27	69%
Total	123	94	76%
Source: LPR&IC analysis			

Of the 94 judges responding to the program review survey, 42 percent reported weekly contact with the Office of the Probate Court Administrator while another 38 percent indicated monthly contact with the office. Sixteen percent said they only had contact with the office a few times a year, while 3 percent stated they had daily contact.

Support services. Each probate judge was asked to rate the current performance of the Office of the Probate Court Administrator with respect to administrative support services. The results are presented in Table II-2. Overall, the judges seem to be generally satisfied with the support services provided by the probate administration staff. The weakest area involved computerization. Many of the judges also noted the recent loss of two long-time employees, the former chief of staff and financial director. Several judges indicated support services in the areas of legal and financial matters had since deteriorated.

Table II-2. Judges’ Survey Responses Regarding Support Services				
Type of Support Service	Excellent	Good	Fair	Poor
Assistance with legal questions/research (N=94)	77%	12%	10%	2%
	89%		12%	
Development of transmittal memorandum or regulations (N=92)	43%	42%	9%	5%
	85%		14%	
Court visits (N=93)	40%	47%	9%	4%
	87%		13%	
Financial audits (N=89)	38%	48%	9%	4%
	86%		13%	
Assistance with financial questions (N=92)	32%	37%	23%	9%
	69%		32%	
Citation (N=93)	58%	33%	8%	1%
	91%		9%	
Continuing judicial education (N=92)	40%	41%	15%	3%
	81%		18%	
Computer support (N=92)	23%	23%	25%	29%
	46%		54%	
Source: LPR&IC survey analysis				

In the briefing report, computerization was noted as an issue in the probate court system. In August 2005, only 75 of the 123 courts were computerized and linked to the administrator office by modem. The current probate administrator indicated that he intended to provide computer equipment and services to all courts by the end of 2005. As of November 28, 2005, 104 of the 123 courts have been computerized. The other courts are scheduled to be computerized by the end of the calendar year.

Another issue commonly mentioned by judges responding to the survey was the availability of probate forms. The administrator's office developed a CD containing the probate court forms and distributed them to all the courts. The administrator's office then discontinued the printing of manual forms. In October 2003, the office also developed a CD version that allowed forms to be filled electronically. This CD was distributed to a small number of courts for testing until the Probate Assembly objected and it was distributed to all courts in October 2004. In January 2005, the probate administrator elected not to renew the software license when it expired thereby leaving the courts without the technological advantage of not having to print out the form and then type the information.

Judges' perception of the Office of the Probate Court Administrator. The committee survey asked the judges to rate their level of satisfaction with the Office of the Probate Court Administrator in a number of areas. The responses are tabulated in Table II-3.

Table II-3. Judges' Survey Responses Regarding the Office of the Probate Court Administrator.

	Very Satisfied	Satisfied	Unsatisfied	Very Unsatisfied
Represent your interests (N=94)	13%	30%	30%	28%
	43%		58%	
Explain changes in the probate court system (N=93)	20%	38%	23%	19%
	58%		42%	
Implement changes in the probate court system (N=94)	13%	39%	29%	20%
	52%		49%	
Inform you of important events and situations (N=94)	29%	31%	22%	18%
	60%		40%	
Advise you of changes in OPCA staff assignments and responsibilities (N=93)	9%	44%	20%	27%
	53%		47%	
Assist you in identifying and solving problems (N=94)	27%	36%	19%	18%
	63%		37%	
Prepare a budget for the probate court system (N=91)	13%	37%	26%	23%
	50%		49%	
Manage the expenses paid for by the probate administration fund (N=88)	15%	33%	26%	26%
	48%		52%	
Provide system-wide statistic/financial data (N=91)	15%	32%	27%	25%
	47%		52%	
Provide analysis of fund expenditures (N=90)	13%	33%	26%	28%
	46%		54%	
Source: LPR&IC survey analysis				

As the table shows, the level of satisfaction and dissatisfaction are closely divided. At least half of the judges indicated being satisfied with OPCA's ability to assist the courts in identifying and solving problems (63 percent), inform judges of important events and situations (60 percent), explain changes in the probate system (58 percent), advise the courts of changes in OPCA staff assignments and responsibilities (53 percent), implement changes in the probate system (52 percent), and prepare a budget for the probate court system (50 percent).

However, more than half of the judges were dissatisfied with OPCA's ability to represent their interests (58 percent), provide system-wide data (52 percent), provide analysis of fund expenditures (54 percent), and OPCA's ability to manage the expenses paid for by the probate administration fund (54 percent). When the responses were examined by court size, the dissatisfied respondents were from primarily small and extra small courts.

Probate Attorney Survey

The program review committee mailed 500 surveys to a random sample of attorneys who practice in Connecticut probate courts and received 245 responses for a 49 percent response rate. A majority of the attorneys indicated that their practice includes estates (87 percent) and conservatorships (71 percent). Trusts and guardianships accounted for 45 percent and 44 percent respectively. Twenty-nine percent indicated they handle children's matters.

The probate attorneys were asked about their experience with the Connecticut probate courts and to rate the courts' performance. Fifty-one percent of the attorneys reported having weekly contact with the probate courts. Twenty-three percent said they had monthly contact, while 13 percent stated they had daily contact. Thirteen percent indicated they only had contact a few times a year.

Seventy-three percent of the attorneys reported having experience with more than three Connecticut probate courts. Twenty-three stated they had experience with two or three courts, while 4 percent reported their probate experience was with one court.

Perception of the Connecticut probate courts. The survey asked the attorneys for opinions on a number of areas including their general perception of the Connecticut probate courts. The results, provided in Table II-4, show that the majority of probate attorneys have a positive opinion regarding the Connecticut probate courts. High ratings were given with respect to the simplicity, fairness, and integrity of the probate process as well as the objectivity of the judges.

Table II-4. Attorney Survey Responses Regarding Perception of the Probate Courts				
	Excellent	Good	Fair	Poor
Simplicity of its process (N=244)	48%	38%	10%	5%
	86%		15%	
Fairness of its process (N=244)	56%	36%	7%	2%
	92%		9%	
Integrity of its process (N=243)	63%	29%	6%	2%
	92%		8%	
Objectivity of the judges (N=242)	61%	29%	8%	2%
	90%		10%	
Source: LPR&IC survey analysis				

Performance ratings of the probate courts. The probate attorneys were asked to rate the performance of the probate courts based on their overall experience. As Table II-5 shows, the probate attorneys gave high ratings to the probate courts in the quality of staff assistance, length of time to resolve matters, the judge's knowledge of the law and procedure and the judges' demeanor and conduct. The accessibility of the courts was one area the attorneys rated slightly lower.

Table II-5. Attorney Survey Responses Regarding Overall Experience with Probate Courts.				
Overall Experience	Excellent	Good	Fair	Poor
Quality of staff assistance (N=242)	61%	32%	7%	0%
	93%		7%	
Accessibility of court hours (N=242)	34%	48%	16%	2%
	82%		18%	
Length of time to resolve matter (N=242)	38%	50%	9%	3%
	88%		12%	
Judge’s knowledge of the law and procedure (N=241)	54%	38%	7%	1%
	92%		8%	
Judge’s demeanor/conduct (N=242)	64%	30%	6%	0%
	94%		6%	
Source: LPR&IC survey analysis				

In addition to their overall experience, the program review survey asked the probate attorneys who dealt with more than one Connecticut probate court if they had found any major differences among the courts. Fifty-seven percent of the attorneys (132) indicated they did experience differences. Table II-6 lists the most frequently cited differences among the courts.

Table II-6. Attorney Survey Responses Regarding Differences Among Probate Courts	
Differences Among Courts	NUMBER (N=132)
Quality of staff assistance	45 (34%)
Judge's knowledge of the law and procedure	43 (33%)
Length of time to resolve matter	37 (28%)
Inconsistent practices	37 (28%)
Accessibility of court hours	31 (24%)
Judge's demeanor/conduct	26 (20%)
Source: LPR&IC survey analysis	

The two top major differences were the quality of the probate staff assistance and the judge's knowledge of the law and procedure. Other major differences included the length of time to resolve matters, inconsistent practices, and the accessibility of court hours. The judge's demeanor and conduct was also mentioned as a major difference among the courts.

Written survey comments. Many of the probate judges and attorneys provided additional written comments to their survey responses. Written comments were made on a broad range of topics. A summary of the common themes for each group is listed in Appendix A.

In general, many of the respondents, both the judges and attorneys, felt there were aspects of the probate system worth conserving. In their written comments, several of the probate attorneys mentioned that the current probate courts provide a valuable and immeasurable community service. Others noted the informal nature of the system as a benefit. The courts were generally viewed as convenient and user-friendly.

The probate judges also mentioned positive features of the system in their written comments. Twenty-five percent of the judges alluded to the unquantifiable service the present system provides its community particularly in knowing its residents. Twenty-seven percent of the judges found the court's informality and user-friendly format to be important.

Section III

PROBATE COURT ADMINISTRATION

Connecticut General Statutes §45a-77 sets out the broad authority of the chief probate court administrator's position to "attend any matters which the probate court administrator deems necessary for the efficient operation of courts of probate and for the expeditious dispatch and proper conduct of business of those courts." The following section provides a discussion of various aspects of the management of the probate courts and activities of the Office of the Probate Court Administrator.

Regulatory Authority

In the 1970s, the Office of the Probate Court Administrator was given the authority to establish regulations concerning auditing, accounting, statistical, billing, recording, filing, and other court procedures, which are still in place. As part of its financial auditing role, OPCA administratively can disallow deductions of operating expenses that are deemed not to be ordinary and necessary.

The Office of the Probate Court Administrator may also adopt binding regulations regarding the hours of court operation, availability of judges, court facilities, and court personnel. To date, regulations on these topics have not been adopted.

Hours of court operation. The hours of operation for the probate courts vary widely. As seen in Table III-1, the operating hours for the probate courts range from two to 42.5 hours a week. The median operating hours decrease as the court size decreases and range from a median of 40 hours a week for the largest courts to 9 hours a week for the smallest. It should be noted that some judges have indicated to committee that they are available 24 hours a day for emergencies, and some courts advertise availability by appointment.

Table III-1. Comparison of Operating Hours of Probate Courts by Population Size						
Group Size	1	2	3	4	5	6
Number of Courts	20	20	20	20	20	23
Population Size	1,635,192	812,126	458,086	294,402	173,428	87,269
Range of operating hours (2-42.5)	35-42.5	16.5-42.5	16.5-40	8-35	6-30.5	2-25.5
Median operating hours	40	35	32	20	19	9
Source: LPR&IC analysis						

An examination of the courts' operating hours by county is shown in Table III-2. Five of the eight probate counties have a median of 20 or more operating hours. Three counties (Windham, Litchfield, and Tolland) have a median of less than 20 hours.

Table III-2. Comparison of Operating Hours of Probate Courts by County								
COUNTY	Fairfield	Hartford	New Haven	New London	Middlesex	Tolland	Litchfield	Windham
Number of Courts	18	24	21	14	12	6	17	11
Range of operating hours (2-42.5)	(12-41.5)	(9-42.5)	(9-42.5)	(2-37.5)	(9-40)	(10-39)	(6-36.5)	(2-35)
Median operating hours	37.5	35	32.5	21.5	20	17.5	15	12
Source: LPR&IC analysis								

As reported in Section II, one area the probate attorneys rated somewhat lower in the committee survey was the overall accessibility of the courts. It was also one of the major differences noted among the courts and a common theme in the written survey comments. The program review committee recommends that **the Office of the Probate Court Administrator shall submit to the Probate Court Assembly for approval minimum standards regarding hours of operation and staffing. All probate courts shall be open pursuant to these standards, and staffing standards should include consideration of necessary vacation time, sick time and personal days. Enforcement of these standards shall be administered by the Office of the Probate Court Administrator.**

Court personnel. Probate judges have discretion in the selection and compensation of court staff as well as the hours worked by their employees. Probate court employees are not state employees and serve at the pleasure of the judge. State law requires each probate judge to appoint a clerk to his or her probate court and allows the appointment of one or more assistant clerks. Other than this statutory provision, there are no guidelines or regulations to address court personnel issues such as compensation levels or training, even though OPCA has the authority to do so.

Staff compensation. The last time OPCA compiled data about probate court staff compensation rates was in 2003. Based on this information, program review determined the reported hourly rate for probate clerks (not considering length of service) in 2003 ranged from a low of \$7.51 to a high of \$34.94 an hour. This variation was also present in the other two staff positions of attorney-clerk and assistant clerk. Table III-3 shows the variation in pay ranges.

The issue of inequities in court staff salaries was frequently mentioned in the probate judges' survey responses. Seventy-five percent of the judges responding to the committee survey indicated they believed the probate staff salary structure needed revision. The majority of these judges stated that minimum standards or guidelines were needed to ensure equity among staff compensation.

Table III-3. Comparison of Hourly Rates of Probate Staff Positions (as reported in December 2003)				
County	Title	Number	Low	High
Fairfield	Clerk	16	15.00	34.94
	Attorney – Clerk	4	19.46	28.21
	Assistant – Clerk	63	10.00	32.56
Hartford	Clerk	21	14.29	28.00
	Attorney – Clerk	4	22.39	25.71
	Assistant – Clerk	62	10.00	20.64
Litchfield	Clerk	13	12.00	22.26
	Attorney – Clerk	0		
	Assistant – Clerk	9	12.00	15.00
Middlesex	Clerk	10	9.00	23.19
	Attorney – Clerk	0		
	Assistant – Clerk	7	12.00	21.43
New Haven	Clerk	20	7.51	28.43
	Attorney – Clerk	3	23.63	37.08
	Assistant – Clerk	50	10.00	23.00
New London	Clerk	12	8.10	21.23
	Attorney – Clerk	0		
	Assistant – Clerk	11	9.00	21.00
Tolland	Clerk	6	12.00	17.90
	Attorney – Clerk	0		
	Assistant – Clerk	7	12.00	14.07
Windham	Clerk	4	13.00	15.00
	Attorney – Clerk	0		
	Assistant – Clerk	1	9.00	9.00
*Length of service was not considered.				
Source: Office of the Probate Court Administrator				

The program review committee agrees that an establishment of salary ranges for all probate unit staff would be more equitable. As elected officials, the probate judges should retain direct control of their employees, including the ability to hire and fire staff members. The compensation of those staff members, however, should be based on salary ranges established by uniform guidelines or regulation. Beyond the question of fairness, these standards could assist in managing costs. Therefore, the program review committee recommends **no later than January 1, 2007, the Office of the Probate Court Administrator shall develop and submit to the Probate Court Assembly for approval salary standards for the various probate staff positions.**

Clerks' training program. The probate attorneys responding to the program review survey also noted the quality of staff assistance as a major difference among the courts. As

mentioned in the briefing report, probate clerks are not mandated to receive any specific training. Their work is guided by the Probate Clerk's Manual published by the probate administrator's office. Many of the clerks are members of the Connecticut Association of Probate Clerks, which sometimes provides educational presentations at its meetings.

Given the survey responses regarding inconsistent practices and differences in the quality of staff assistance, committee recommends **the Office of the Probate Court Administrator, in conjunction with the Connecticut Association of Probate Clerks, shall develop a mandatory training program for probate clerks no later than September 1, 2006. This training should insure that consistent standards be developed and implemented. Probate clerks should be given paid time for their participation in continuing education and the cost of the training be covered by the probate court.**

Other provisions. Although regulations have not been adopted in a number of areas, there are other provisions in place which have not been enforced by the Office of the Probate Court Administrator. Two examples are the adequacy of court facilities and the number of probate staff.

Adequate court facilities. State law requires, at a minimum, that each probate court facility must include a room for the judge to conduct judicial proceedings in private, a separate room for court staff, appropriate furnishings, access to a larger hearing room, use of copiers, microfilming, telephone service and other related supplies. State law also requires each probate judge to keep the records and files of the probate court in a fire-resistant safe or vault in office space provided by the town or towns comprising the probate district. Currently, a majority of towns provide office space for the probate courts in their town hall.

Based on the most recent reports of court visits conducted by staff of the Office of the Probate Court Administrator, 29 courts are deemed to have inadequate facilities. Pursuant to state law, the probate administrator may take action against any districts in non-compliance with the minimum standards requirement for court facilities. The probate administrator may submit a report to the legislature's judiciary committee with a recommendation that the probate court be abolished as a separate district and be consolidated with a contiguous district where suitable court facilities can be provided. If the administrator believes abolishment is not in the public interest, he may seek enforcement of the requirements for the provisions of suitable court facilities through legal action in the superior court. To date, the probate administrator has not taken formal action against any court with inadequate facilities.

Based on the court visit reports and written comments submitted in the program review surveys, suitability of the facilities and other resources available to probate courts fluctuates in different parts of the state. Adherence to minimum standards for adequate facilities is important. The users of the probate courts should be able to discuss their personal, private matters with the judge and court staff with an expectation of privacy and confidentiality. The program review committee acknowledges that this may be a hard economic time for enforcement of an unfunded mandate. Nevertheless, minimum standards must be enforced to retain the integrity of the court functions. Thus, the program review recommends **the Office of the Probate Court Administrator must pursue all available enforcement options to ensure compliance with statutory mandates.**

Authority of OPCA. The probate judge survey asked judges about any shortcomings in the authority of the position of the probate court administrator. Sixty-four percent of the judges responding indicated they believed shortcomings exist; 36 percent did not. When asked to explain what they viewed as shortcomings, the responses varied considerably. Twenty-two percent of the judges stated they believed stronger authority was needed by the probate court administrator to provide oversight and enforcement in the probate system. Eight percent of the judges believed the administrator's authority was too broad. Ten percent of the judges felt the Office of the Probate Court Administrator exceeded its existing authority.

In addition to the provisions discussed above, the probate court administrator is authorized to make whatever additional inquiries are deemed appropriate to ascertain whether the business of the court has been conducted in accordance with law, rules of the courts of probate, and the canons of judicial ethics. In theory, the probate administrator may refer any violations of these provisions to the Council on Probate Judicial Conduct to discipline judges found to violate the rules. However, given that probate judges are elected officials, there is limited operational accountability short of impeachment. Currently, when the Office of the Probate Court Administrator notes deficiencies in the annual evaluation of probate courts or complaints are received, the probate administrator tries to address the problems informally with the judge.

The program review committee agrees that the administrator's enforcement authority is somewhat limited by the fact that probate judges are elected officials. A different enforcement mechanism may be necessary if non-compliance does not rise to the level for referral to the Council on Probate Judicial Conduct. This underscores the need for regulations concerning the availability of judges, court facilities, court personnel and records, or hours of court operation. The program review committee believes the establishment of regulations will provide a firm standard by which accountability can be measured. Non-compliance or disregard for established regulations would provide more substance to potential referrals to the council. For matters not subject to regulation, the program review committee recommends that **the Office of the Probate Court Administrator, in consultation with the Probate Assembly, should examine the issue of enforcement authority for situations that do not rise to the level of formal referral to the Council on Probate Judicial Conduct. The review should take into consideration but not limit itself to monetary sanctions. The Office of the Probate Court Administrator must prepare and submit a formal report with any recommended changes to the General Assembly's committees of cognizance and the Chief Justice no later than September 1, 2006.**

Judicial training and continuing education. In addition to their mandatory initial training, every year probate judges must complete a minimum of 15 credit hours of approved judicial education. Judges may satisfy some credits with attendance at regional meetings that include probate administration-sponsored programs on basic probate procedures. Judges may also receive credit for presenting seminars and other instructional materials related to probate law and procedures upon approval of the judicial education standards committee of the Probate Assembly.

Each judge must submit to the probate court administrator an annual statement of the number of hours of judicial education programs attended during the reporting period. Any judge failing to comply with these requirements is referred to the executive committee of the probate

assembly for action, including but not limited to, referral to the Council on Probate Judicial Conduct.

As discussed in the committee briefing report, every year there are a number of judges who fail to comply with the continuing education requirements. Some are missing only an hour or so of credit. Others are carrying delinquent credits from the previous year. According to the Office of the Probate Court Administrator, judges are allowed to make-up the missing credits in the following year.

According to the probate attorneys responding to the program review survey, the second major difference among the courts is the judge's knowledge of the law and procedure. Given the public hearing testimony and survey comments received by the program review committee regarding inconsistent policies and practices among courts, the program review committee recommends that **the Office of the Probate Court Administrator shall enforce the continuing education credit requirement for judges and discontinue the allowance of credit for presentations to the general public.**

Training for newly elected judges. Newly elected probate judges are required to complete a training program developed by the Office of the Probate Court Administrator. The training must be completed prior to the judge assuming office. At minimum, the training curriculum is statutorily required to address the rules of judicial conduct and ethics as well as the operation of the probate court and resources available to judges. A new judge must also receive training during his or her first six months in office in these areas:

- civil procedure including constitutional issues, due process, and evidentiary considerations;
- property law with conveyance and title considerations;
- wills and trusts; and
- family law.

Seventy-eight percent of the judges responding to the program review survey stated they believed the training they received during the first six months as a probate judge prepared them sufficiently for their duties and responsibilities. Twenty-two percent did not believe the initial training was sufficient. The majority of the judges who did not believe their initial training was adequate stated the training was too general in nature or there was too much theory and not enough real-life application.

The program review committee recommends **the Office of the Probate Court Administrator shall re-examine the scope of the probate judge training and continuing education program to address inconsistent practices and better understanding of probate practice.**

The Office of the Probate Court Administrator and the Probate Assembly shall develop a curriculum and examination to establish the competency of probate judges to hear cases. Before taking office, new probate judges will be required to complete the curriculum and/or pass the examination. Currently sitting judges should be "grandfathered" in for the balance of their term.

Section IV

FINDINGS AND RECOMMENDATIONS

In the previous sections of this report, the program review committee made a number of findings and recommendations regarding the finances and administration of the probate courts. The following is a discussion of these findings and recommendations in light of the existing organizational structure of the probate court system.

The probate court system, at least through 2005, has spent less than its incoming gross receipts making it at present self-sustaining. However, two categories of expenses have the potential to impact the financing of the existing 123 probate courts – health insurance costs and indigent costs. In addition, lack of controls on the operating expenses of the individual courts and the Office of the Probate Court Administrator may adversely affect the ability of the probate court system to cover all of its financial obligations. Based on a variety of assumptions, the Probate Administration Fund is likely to develop financial problems by FY 2010.

To promote financial accountability, the program review committee recommends various fiscal controls such as capping the growth of the operating budget of the Office of the Probate Court Administrator, standardizing probate staff salaries, and a re-examination of the judicial compensation formula. In addition, the committee recommended the costs related to indigent cases be paid from the state's general funds. The issue of controlling health insurance costs is more difficult to resolve.

Since 1996, the cost of each court's share of health insurance for judges and clerks has been a business expenses charge to the Probate Administration Fund. When this practice was authorized, the Probate Administration Fund was sufficient to cover the health insurance expenses. However, the growth of operating expenses including health insurance costs and the transfer of \$15 million of the Probate Administration Fund into the General Fund has changed the current situation. A decision must be made whether the Probate Administration Fund should continue to pay for full coverage of health insurance costs for the existing probate system of 123 courts or whether each court should be charged for their health insurance benefits. As noted in Section I, the health insurance costs of 41 courts are currently subsidized by the probate system based on 2004 figures.

One solution to the health insurance for active employees issue is to increase the amount each probate employee is required to financially contribute to his or her health insurance costs regardless of whether the PAF pays for the remaining costs or each individual court does. Whether cost sharing would provide enough savings to maintain the current 123 courts is questionable. A second solution would be to re-examine the number of probate employees receiving health insurance, which raises the question about the numbers of courts.

By state law, probate employees may participate in the state health insurance plan if they work a minimum of 20 hours a week. The probate judges are not subject to this requirement. They receive full health insurance coverage and partial coverage for their dependents regardless of the hours they work.

As noted in Section III, there are 38 courts operating less than 20 hours a week. The probate judges in these courts are eligible for full health insurance coverage although their staffs are not. Presumably, the probate judges are provided this benefit as an enticement to be available to the courts when needed and handle the incoming workload.

A review of the weighted workload of the 123 probate courts reveals considerable variance. As demonstrated by the workload analysis in Section I, the weighted workload of the courts decreases as the courts decrease in size. Ninety-three percent of the weighted workload is managed by the 80 largest courts. Table IV-1 shows the variance in population served, total and median weighted workload, number of courts, total operating cost per weighted workload (including health insurance), and hours open among the probate counties.

Table IV-1. Weighted Workload (WWL), Cost per WWL, and Median Hours by County						
County	Population	Total WWL	Median WWL	Cost per WWL (including health insurance)	Number of Courts	Median Hours
Fairfield	896,202	58,941	2,835	\$101.82	18	37.5
Hartford	865,279	72,418	2,125	\$87.61	24	35
Litchfield	188,568	13,460	605	\$113.62	17	15
Middlesex	159,679	12,534	562	\$106.01	12	20
New Haven	835,657	66,764	2,244	\$80.65	21	32.5
New London	262,689	19,720	744	\$97.52	14	21.5
Tolland	141,089	8,393	1,153	\$91.30	6	17.5
Windham	111,340	7,445	370	60.83	11	12
Source: LPR&IC analysis						

As the table shows, differences exist among the probate counties. The disparities in weighted workload are most evident in the fact that the Tolland probate county with six probate courts and Windham county with 11 probate courts carry a total weighted workload of 15,838. This is approximately the same total weighted workload of the individual Hartford probate court (15,386). In essence, there are 17 probate judges receiving higher cost per WWL compensation and full health insurance coverage for approximately the same amount of work carried out by one judge.

Based on the program review committee's data analysis, interviews, and survey responses, the committee concludes that voluntary consolidation of the probate courts is reasonable given the need for stronger financial accountability along with evidence of workload inequities in the current probate districts. Analysis conducted by the program review committee show opportunities for consolidation exists across the state.

For example, in addition to weighted workload disparities noted above, the probate courts in Windham County are open significantly lower number of hours than most other courts in the state. As Table IV-2 shows, five of the probate districts in this region are open six hours a week or less. With the exception of the Brooklyn probate court, four of the five courts have weighted

workloads of 224 or less. Three of the courts have a cost per weighted workload exceeding the statewide median of \$95. This suggests that financial savings would be achieved in the consolidation of some courts in this region.

Table IV-2. Weighted Workload (WWL), Hours, and Cost per WWL in Windham County			
Court District	WWL	Hours Open	Cost per WWL (including health insurance)
Hampton	159	6	\$31.03
Eastford	183	2	\$105.14
Ashford	187	2.5	\$137.94
Woodstock	224	6	\$152.41
Pomfret	356	24	\$89.42
Thompson	370	12	\$27.39
Brooklyn	628	6	\$58.07
Putnam	803	30.5	\$60.83
Plainfield	1,375	27.5	\$58.68
Killingly	1,427	35	\$75.65
Windham	1,735	19	\$60.44
Source: LPR&IC analysis			

Advantages and disadvantages to consolidation. As the example above illustrates, some financial savings may be achieved depending on the number of consolidated courts. Fewer courts should provide greater control of expenses. Combining courts based on weighted workload may achieve some economies of scale and reduce the cost per workload unit. As a result, there may be a decrease in administrative expense including compensation and health insurance benefits for fewer judges. Courts servicing larger populations tend to operate full-time hours which would provide better access to the public.

While there may be some cost savings achieved through consolidation, there may also be a potential financial cost if there is a significant reduction in the number of courts. Larger courts carry higher workloads perhaps requiring the investment in expanded court facilities and full-time staff. Some believe larger districts covering more geographical area may create transportation issues for certain probate court users such as the elderly, disabled, and residents of rural regions.

Conclusions. The program review committee believes any voluntary consolidation of the courts must take into consideration a number of factors to address several of the disadvantages mentioned above. A plan based on only one factor such as weighted workload or a minimum population district size (e.g. 50,000) would impose a “one size fits all approach.” It may take the voluntary consolidation of many towns in some regions to satisfy a large population minimum potentially creating transportation issues in rural areas and arguably the loss of local or community characteristics. As such, voluntary consolidation must be based on a combination of factors such as workload, adequacy of court facilities, and geography. Therefore, the program review committee makes the following recommendations.

The Office of the Probate Court Administrator and the Probate Court Assembly shall jointly establish a minimum allowable workload standard per full-time employee.

The Office of the Probate Court Administrator and the Probate Court Assembly shall develop a report identifying potential opportunities for a voluntary consolidation of existing probate court districts to achieve a minimum weighted workload in each district. In addition to a minimum weighted workload, the report must take into consideration the adequacy of the existing court facilities, the potential expense for expanded facilities, and any reasonable geographic impact on transportation. Furthermore, the report must take into account the impact of the anticipated expansion of the regional children probate court model on the existing workload of the regular probate courts.

The report shall be developed by September 1, 2006, and provided to the Probate Assembly and the chief elected official of each town recommended for consolidation for comment. A final report, including comments received, shall be submitted to the Judiciary Committee and the Chief Justice by December 31, 2006.

Alternative Approaches

There are at least two alternatives to consolidation. One option is to maintain the status quo. The other is to eliminate the courts completely by merging them into the superior courts. The following is a discussion of the advantages and disadvantages of other approaches.

Maintain the status quo. The legislature could retain the existing structure of 123 probate court districts and still make the recommended management improvements to control the costs of the probate system such as better management of the number and compensation of staff will help reduce total operating costs. However, as discussed earlier, the cost per weighted workload unit will continue to be high if the level of productivity (i.e. workload) is low.

The existing system of local probate courts has endured a 300-year history. The current probate structure is based on the notion of preserving a “local” community interest. The geographic convenience of a local court may benefit certain types of probate clients such as the elderly and disabled who may have transportation issues. Proponents for changing the status quo argue that individuals in many areas already travel to another town for other services such as groceries or medical services, which are used more frequently.

Some believe smaller court districts can provide more personal service and insight because of its knowledge and connection with the community. Advocates for consolidation believe that relatives and fiduciaries of decedent estates involved in probate matters are frequently not “local” residents and may even reside in another state. However, the knowledge and connection with the community may also produce a few negative effects. First, it is unknown to what extent, if any, the local connection and knowledge may affect the court as an objective and impartial entity. Second, some probate attorneys wrote in their comments that the local nature of the probate court system allows judges to show favoritism for local attorneys in decisions and appointments as conservators or other indigent matters.

Seventy-three percent of the probate judges agreed that having a local probate court is important. Fifty percent of these judges strongly agreed with this idea. Sixty-eight percent of the probate attorneys believed having a local court was an important feature.

Table IV-3. Survey Responses Regarding Local Probate Courts				
Having a “local” probate court in each town is important.	Strongly Agree	Agree	Disagree	Strongly Disagree
Judges response (N=94)	50%	23%	17%	10%
	73%		27%	
Attorneys response (N=242)	39%	29%	25%	7%
	68%		32%	
Source: LPR&IC survey analysis				

The program review committee believes this approach is feasible. However, it would allow an inefficient management of resources and require an infusion of revenue to sustain it. In particular, funds must be located to address the growth of health insurance costs. As discussed earlier, this may be accomplished by either requiring probate staff to financially contribute more to their health insurance costs, providing state revenue to cover the expense, making the towns served by the probate district responsible for the health insurance, or increasing the probate fees of the users of system.

Merger into superior court. Another option is to merge the probate courts into the existing superior court system. A merger may alleviate certain issues raised by some practitioners. Probate matters would be handled by full-time superior court judges who are attorneys screened by the state Judicial Selection Commission. Concerns regarding ethical conflicts of interest, accessibility of court hours, and the problem of de novo appeals would presumably be resolved. Minimal cost savings may be achieved with the elimination of part-time probate judges. Towns would not be obligated to provide facilities. The geographical areas would follow wholly accepted existing judicial districts. All fees would be paid into the general fund and subject to the controls of the judicial branch. The probate staff would be state employees managed by state guidelines and regulation. In addition, revenue may increase if the probate entry fees were made parallel to the superior court fees.

However, the superior court system is not known to be user-friendly. There is also concern that a merger could mean delays in proceedings and longer wait times in an already burdened superior court system. It is unlikely the existing number of superior court judges would be able to absorb the probate workload. Additional judges would have to be selected and appointed by the Judicial Selection Commission. Depending on the number of additional judges needed, costs may increase as the full-time judges would be compensated at the full rate of superior court justices. In addition, the current judicial court facilities may not be able to handle an increase of traffic and workload.

The program review committee survey asked probate judges to what extent the probate courts should be incorporated into the superior court system, 96 percent answered “Not at all”; one percent said “Incorporate completely”. Three percent of the judges said only certain functions such as children’s matters should be incorporated into the superior court system.

The probate attorneys held a similar sentiment. Ninety-four percent stated they disagreed with all probate functions being totally merged into the superior court. Of these responses, 69 percent strongly disagreed. Only six percent of the attorneys felt that the courts should be merged. The written comments from both judges and attorneys indicated concerns for the loss of the user-friendly aspects of the probate courts and the potential for delays in the length of time to resolve matters.

The program review committee agrees that wholesale elimination of the probate courts as a separate system would achieve minimal financial savings and would be viewed as a loss of service to the people in the districts those courts serve.

Carve out probate jurisdiction into other forums. A third alternative is to carve out certain probate functions into newly established specialty courts or even into the existing superior court system. This concept is currently used in the New Haven regional children's probate court model. This concept was also an aspect of the probate court administrator's 2004 reorganization plan. The plan created a two-tiered system where any party could remove a contested case to one or more statewide specialty courts with appointed judges that would hear contested cases.

Separating certain probate functions such as contested matters, children's issues, or cases relating to mental illness, and placing them into another forum may provide some benefit to the isolated matters. Additional resources including social workers or specially trained judges and staff may be dedicated to these cases. The grouping of certain issues may result in greater consistency in handling of these areas. As discussed in Section I, support for this concept, at least for children's matters, is evident in that the legislature has already authorized the expansion of this model.

Fifty-five percent of the judges and the probate attorneys felt that there should be specialty probate courts for matters such as children's issues or mental illness. In particular, the judges appear to support isolating children's matters as 79 percent of the judges believe the regional children's probate court model is a good concept.

Table IV-4. Survey Responses Regarding Specialty Probate Courts.

Table IV-4. Survey Responses Regarding Specialty Probate Courts.				
There should be specialty probate courts for matters such as children’s issues or mental illness.	Strongly Agree	Agree	Disagree	Strongly Disagree
Judges response (N=94)	19%	36%	28%	17%
	55%		45%	
Attorneys response (N=233)	25%	32%	36%	6%
	57%		42%	
In theory, a regional children’s probate court model is a good concept.				
Judges response (N=94)	22%	57%	14%	6%
	79%		20%	
Source: LPR&IC survey analysis				

Cost is the greatest disadvantage to this option which creates another level of bureaucracy that must be paid for (e.g. the potential expense of additional court facilities and staff). Depending on the type and number of functions carved out, the regular probate courts could lose a substantial amount of work thereby reducing them primarily to administrative tasks. In addition, more administrative costs and paperwork may be created from a model which requires the transfers of cases from one court to another such as specialty courts for contested matters.

In general, the probate judges and attorneys seem to agree that the current probate jurisdiction is not overextended. The vast majority of judges (97%) and attorneys (87%) disagreed with the statement that the current scope of probate jurisdiction is too broad. Almost all of the probate judges (98%) and attorneys (97%) responding to the committee survey felt that probate courts should continue to have exclusive jurisdiction over decedent estates. Eighty-seven percent of the judges and 84 percent of the attorneys believed the probate courts should continue to have shared or concurrent jurisdiction with the superior court.

Table IV-5. Survey Responses Regarding Probate Court Jurisdiction.				
The current scope of probate court jurisdiction is too broad.	Strongly Agree	Agree	Disagree	Strongly Disagree
Judges Response (N=93)	0%	3%	39%	58%
	3%		97%	
Attorneys Response (N=241)	1%	12%	60%	27%
	13%		87%	
Probate courts should continue to have exclusive jurisdiction over decedent estates.	Strongly Agree	Agree	Disagree	Strongly Disagree
Judges Response (N=93)	84%	14%	2%	1%
	98%		3%	
Attorneys Response (N=240)	61%	36%	3%	0%
	97%		3%	
Probate courts should continue to have shared or concurrent jurisdiction on certain matters with the superior court. (e.g. children’s matters)	Strongly Agree	Agree	Disagree	Strongly Disagree
Judges Response (N=93)	42%	45%	11%	2%
	87%		13%	
Attorneys Response (N=234)	17%	67%	12%	4%
	84%		16%	
Source: LPR&IC survey analysis				

APPENDICES

Legislative Program Review and Investigations Committee

SURVEY OF PROBATE JUDGES

1) On average, how often do you personally have contact, by telephone or in person, with the Office of the Probate Court Administrator regarding any aspect of your work as a probate judge? N=93

(a) Daily 3% (b) Weekly 42% (c) Monthly 38% (d) A few times a year 16%

2) Please rate the current performance of the Office of the Probate Court Administrator in terms of each aspect listed below:

	Excellent	Good	Fair	Poor
(a) Assistance with legal questions/research N=94	77%	12%	10%	2%
(b) Development of transmittal memorandum/regulations N=92	43%	42%	9%	5%
(c) Court visits N=93	40%	47%	9%	4%
(d) Financial audits N=89	38%	48%	9%	4%
(e) Assistance with financial questions N=92	32%	37%	23%	9%
(f) Citation N=93	58%	33%	8%	1%
(g) Continuing judicial education N=92	40%	41%	15%	3%
(h) Computer support N=92	23%	23%	25%	29%

3) Overall, how satisfied are you with the ability of the Office of the Probate Court Administrator to:

	Very Satisfied	Satisfied	Unsatisfied	Very Unsatisfied
(a) Represent your interests N=94	13%	30%	30%	28%
(b) Explain changes in the probate court system N=93	20%	38%	23%	19%
(c) Implement changes in the probate court system N=94	13%	39%	29%	20%
(d) Inform you of important events and situations N=94	29%	31%	22%	18%
(e) Advise you of changes in OPCA staff assignments and responsibilities N=93	9%	44%	20%	27%
(f) Assist you in identifying and solving problems N=94	27%	36%	19%	18%
(g) Prepare a budget for the probate court system N=91	13%	37%	26%	23%
(h) Manage the expenses paid for by the probate administration fund N=88	15%	33%	26%	26%
(i) Provide system-wide statistic/financial data N=91	15%	32%	27%	25%
(j) Provide analysis of fund expenditures N=90	13%	33%	26%	28%

4) Do you believe any shortcomings exist in the authority of the Probate Court Administrator position? Yes
64% No 36% N=87

4a) If yes, please specify and explain. _____

5) Do you believe the training you received during your first six months as a probate judge prepared you sufficiently for your duties and responsibilities? Yes 78% No 22% N=91

5a) If no, was the training: N=26

38% (i) too general in nature

 (ii) too complex

 (iii) the right level of detail, but situations discussed rarely occur on the job

38% (iv) too much theory and not enough real-life application

23% (v) other (please explain) _____

6) In recent years, there has been debate regarding the financial condition of the Connecticut probate court system. How much of a financial problem do you believe exists for your individual court and for the overall system now and over the next five years?

Currently:	Significant Problem	Moderate Problem	Minor problem	Not a problem	Don't know
(a) Your district N=93	3%	9%	11%	75%	2%
(b) Whole probate system N=93	13%	22%	22%	34%	10%
Over the next five years:					
(c) Your district N=93	9%	12%	14%	52%	14%
(d) Whole probate system N=90	23%	20%	21%	16%	20%

7) In your opinion, do the following items require revision?

a) the annual financial assessment formula Yes 57% No 44% N=88

If yes, why? _____

b) the judges' compensation schedule Yes 72% No 28% N=92

If yes, why? _____

c) the calculation of decedent's fees Yes 55% No 45% N=94

If yes, why? _____

d) the probate fee structure (\$150 filing fee) Yes 65% No 35% N=91

If yes, why? _____

e) the weights assigned to calculate weighted workload Yes 65% No 35% N=91

If yes, why? _____

f) probate staff salary structure (e.g., probate clerks) Yes 75% No 25% N=91

If yes, why? _____

8) To what extent would you agree or disagree with the following statements:

	Strongly Agree	Agree	Disagree	Strongly Disagree
(a) The current method of calculating probate fees for decedent estates is fair. N=93	11%	55%	24%	11%
(b) The position of a probate judge should be a full-time occupation. N=93	13%	9%	45%	33%
(c) Probate judges should be required to be attorneys. N=94	32%	27%	16%	26%
(d) There should be specialty probate courts for matters such as children's issues or mental illness. N=94	19%	36%	28%	17%
(e) The current scope of probate court jurisdiction is too broad. N=93	0%	3%	39%	58%
(f) Probate courts should continue to have exclusive jurisdiction over decedent estates. N=93	84%	14%	2%	1%
(g) Having a "local" probate court in each town is important. N=94	50%	23%	17%	10%
(h) Probate courts should continue to have shared or concurrent jurisdiction over certain matters with the superior court. N=93	42%	45%	11%	2%
(i) Revenues generated by probate fees should <u>only</u> be used for the administration and maintenance of the 123 probate courts. N=92	38%	30%	26%	5%
(j) Revenues generated from probate fees should be used to fund special projects such as the regional children's probate court or mental health projects. N=91	15%	35%	27%	22%
(k) In theory, a regional children's probate court model is a good concept. N=94	22%	57%	14%	6%

9) Do you believe a structural reorganization plan for the probate court system is necessary?

Yes 40% No 60% N=92

10) Should there be forced consolidation of probate districts unable to maintain financial autonomy?

Yes 37% No 63% N=89

11) Would you favor or oppose a structural reorganization plan based on population minimums (e.g., districts of at least 45,000)? Favor 29% Oppose 71% N=91

12) Would you favor or oppose a structural reorganization plan based on average weighted caseload?

Favor 23% Oppose 77% N=84

13) To what extent should the probate courts be incorporated into the superior court system?

N=93

96% **(a)** Not at all

3% **(b)** Only certain functions (list : _____)

1% **(c)** Incorporate completely

14) Are there any comments you would like to make regarding any aspect of the Connecticut probate court system or the Office of the Probate Court Administrator?

(Please attach a separate piece of paper, if necessary)

Common Themes in Probate Judges' Written Survey Responses

In addition to the individual survey questions, the survey responses from the 94 probate judges also generated a great number of written comments about the probate court system. Certain perspectives were unique to the respondent's experience. However, several key themes emerged and those common threads are summarized here.

Number Of Judges

Statement

21	OPCA needs the ability to enforce/have oversight of individual courts
5	OPCA should be in charge of all probate finances
3	OPCA should NOT be in charge of all probate finances
7	OPCA authority is too broad
2	OPCA does not need public relations staff
10	Concern over the OPCA expenditures
8	Administrator should be appointed by Governor/Legislature
19	Loss of OPCA longtime employees (Chief of Staff and Financial Director)
10	Administrator is misrepresenting/not forthcoming with information
9	Administrator is exceeding authority
7	Administrator only wants consolidation
18	Administrator has personal agenda
7	Administrator treats probate courts differently
7	Administrator has tried to implement change
6	Judge's compensation should be based on WWL
2	Judge's compensation should be based on hours worked
2	Judge's compensation should be based on population served
39	New calculation of probate fees is unfair
35	Entry fee should be the same as Superior Court
22	Weighted workload is not accurate
21	Weighted workload is arbitrary
5	Probate courts should be full-time
3	Position of probate judge should be full-time
4	Probate judges should be attorneys
2	Probate judges NOT be required to be attorneys
10	Reduce the number of probate courts
2	Reorganization should be based on population served
2	Reorganization should be based on weighted workload
19	No merger with Superior Court
6	Involuntary consolidation won't work
4	Finances should not be the only reason to consolidate
15	Minor adjustments to system needed
3	Administrator's 2004 reorganization plan is good
4	Reform needed
4	Administrator and Probate Assembly are not getting along
8	Probate Assembly should have more input/voice
55	Probate staff salaries are inconsistent/need guidelines
5	Standards/guidelines needed for consistency

3	Probate staff should be state employees
2	State should assume all insurance costs
6	300 year history should be preserved
24	Probate courts provide valuable/unquantifiable community service
9	Probate courts are user-friendly
17	Probate courts provide informal atmosphere and convenient access
5	Informality of process is important
7	Specialty courts will drain system finances
7	Regional children's court costs are not accurate
4	Special projects costs should be shared by other agencies (DMHAS/DCF)
6	There is no financial crisis
3	Legislature should not have taken \$15 million
8	Probate courts have bad image
9	Probate courts need better technology

Random Selection Process for Probate Attorneys

The program review committee staff used five lists to compile a pool of attorneys to receive the survey including:

- 1) attorney lists compiled and used by each probate court for conservatorships and other appointments;
- 2) attorneys who have received reimbursement for cases before a probate court within the last year (e.g. indigent cases);
- 3) attorneys who have purchased a probate practice book;
- 4) attorneys providing contact information found on the computerized probate case management system within the last year; and
- 5) attorneys who are members of the Connecticut Bar Association's Section on Estates and Probate.

The pool, based on the mailing address, was then divided into: large, medium, small and extra small by population sizes (e.g. Hartford is a large court with a population over 70,000). Approximately 125 addresses in each population size were randomly selected and mailed.

Legislative Program Review and Investigations Committee

SURVEY OF ATTORNEYS WHO PRACTICE IN PROBATE COURT

1) In the course of your practice, how often, on average, do you interact with a Connecticut probate court?

(a) Daily 13% (b) Weekly 51% (c) Monthly 23% (d) A few times a year 13% N=243

2) During the last three years, how many different Connecticut probate courts have you dealt with?

(a) Only one court 4% (b) Two or three courts 23% (c) More than three courts 73%

N=244

3) In what subject area(s) has your Connecticut probate experience primarily been: N=245

(a) Estates 87% (b) Trusts 45% (c) Children's matters 29% (d) Guardianships 44%

(e) Conservatorships 71% (f) Other 8% (please specify _____)

4) Based on your most recent experience with a Connecticut probate court, please rate the performance of that probate court in handling your legal matter in terms of:

		Excellent	Good	Fair	Poor
(a) Quality of staff assistance	N=242	74%	21%	5%	0%
(b) Accessibility of court hours	N=242	50%	38%	12%	0%
(c) Length of time to resolve matter	N=242	52%	37%	7%	4%
(d) Judge's knowledge of the law and procedure	N=240	67%	25%	5%	2%
(e) Judge's demeanor/conduct	N=240	75%	18%	5%	2%

5) If you have dealt with more than one Connecticut probate court, did you find any major differences among them?

Yes 57% No 43% N=233

5a) If yes, what were the differences? _____

6) Based on your overall experience, please rate the performance of Connecticut probate courts in handling your legal matter in terms of:

		Excellent	Good	Fair	Poor
(a) Quality of staff assistance	N=242	61%	32%	7%	0%
(b) Accessibility of court hours	N=242	34%	48%	16%	2%
(c) Length of time to resolve matter	N=242	38%	50%	9%	3%
(d) Judge's knowledge of the law and procedure	N=241	54%	38%	7%	1%
(e) Judge's demeanor/conduct	N=242	64%	30%	6%	0%

7) Based on your cumulative experience, how would you rate the Connecticut probate court system overall in terms of the items listed below:

		Excellent	Good	Fair	Poor
(a) Simplicity of its process	N=244	48%	38%	10%	5%
(b) Fairness of its process	N=244	56%	36%	7%	2%
(c) Integrity of its process	N=243	63%	29%	6%	2%
(d) Objectivity of the judges	N=242	61%	29%	8%	2%

8) Based on your cumulative experience dealing with Connecticut probate courts, to what extent would you agree or disagree with the following statements:

	Strongly Agree	Agree	Disagree	Strongly Disagree
(a) The method of calculating probate court fees for decedent estates is fair. N=231	13%	52%	26%	9%
(b) Probate court filing and processing fees (e.g., \$150 application) are fair. N=238	21%	66%	11%	2%
(c) The position of a probate judge should be a full-time occupation. N=233	27%	27%	38%	9%
(d) Probate judges should be required to be attorneys. N=242	49%	31%	16%	4%
(e) There should be specialty probate courts for matters such as children's issues or mental illness. N=233	25%	32%	36%	6%
(f) All probate functions should be totally merged into the superior court. N=240	4%	2%	25%	69%
(g) Having a "local" probate court in each town is important. N=242	39%	29%	25%	7%
(h) The current scope of probate court jurisdiction is too broad. N=241	1%	12%	60%	27%
(i) Probate courts should continue to have exclusive jurisdiction over decedent estates. N=240	61%	36%	3%	0%
(j) Probate courts should continue to have shared or concurrent jurisdiction on certain matters with the superior court. (e.g. children's matters) N=234	17%	67%	12%	4%

9) Are there any comments you would like to make about any aspect of the probate court system in Connecticut?
(Please use a separate piece of paper if necessary.)

Common Themes in Attorney Written Survey Responses

In addition to the individual survey questions, the survey responses from the 245 probate attorneys around the state yielded a great number of written comments about the probate court system. Certain perspectives were unique to the respondent's experience with the system. However, several key themes emerged and those common threads are summarized here.

Number of <u>Attorneys</u>	<u>Statement</u>
45	Quality of staff assistance differs among probate courts
31	Accessibility of court hours is problem
37	Length of time to resolve matters differs among probate courts
43	Judges knowledge of law or procedure differs among courts
26	Judges demeanor/conduct is problem
20	Probate fees are high
23	There should be full-time probate courts
23	Probate courts provide valuable/unquantifiable community service
22	Probate courts are user-friendly
23	Probate courts provide informal atmosphere and convenient access
2	Probate courts need better technology
7	Contested cases should be required to be "on the record"
5	Probate courts must have adequate facilities
22	Consolidate/reduce number of probate courts
2	Probate courts should merge with Superior Court
28	Probate courts should not merge with Superior Court
3	Geography should be considered when merging probate districts
2	Elected judges are a good idea
4	Elected judges are not a good idea
42	Inconsistent practices exist among probate courts
21	Procedural improvements to the probate system are needed
13	Probate process take too long to resolve
29	Local nature of probate court is good
7	Local nature of probate court allows favoritism
9	Judges do NOT need to be attorneys
18	Judges must be attorneys
11	Conflict of interest exists with part-time judges
4	More training needed in probate courts
8	Children's probate court is a good idea
7	Specialty courts are needed
2	Probate courts should be funded by General Fund
2	Probate system works well because of attorneys
3	Probate courts produce too much busywork
3	There is no "one" probate experience
5	Probate court should adopt Uniform Probate Code

6	Reform is needed in system
24	System worth saving
7	Minor adjustments to system needed

PROBATE COURT SYSTEM INCOME, EXPENSES AND PROBATE ADMINISTRATION FUND BALANCE														
ITEM	ACTUAL 1998	1999	2000	2001	2002	2003	2004	ESTIMATED 2005	2006	2007	2008	2009	2010	2011
Income														
Court Receipts	19,524,000	21,546,000	23,724,000	24,684,000	25,004,000	25,957,000	26,853,766	27,421,441	27,969,870	28,529,268	29,099,853	29,681,850	30,275,487	30,775,487
Interest Income	725,000	786,000	1,089,000	1,395,000	714,000	399,000	117,202	174,656	156,462	174,656	78,113	0	0	0
Total Income	\$20,249,000	\$22,332,000	\$24,813,000	\$26,079,000	\$25,718,000	\$26,356,000	\$27,069,568	\$27,596,097	\$28,126,332	\$28,653,567	\$29,177,966	\$29,681,850	\$30,275,487	\$30,775,487
Expenses														
Salaries - Courts	6,201,000	6,594,000	6,940,000	7,396,000	7,760,000	8,226,000	8,625,793	8,894,667	9,151,104	9,408,659	10,089,092	10,593,547	11,123,224	11,723,224
Other Court Expenses	1,989,000	2,157,000	2,160,000	2,256,000	2,302,000	2,498,000	2,293,404	2,362,206	2,433,072	2,506,064	2,561,246	2,658,684	2,738,444	2,738,444
Judges Compensation	4,893,000	5,559,000	5,909,000	6,195,000	6,518,000	6,498,000	6,602,028	6,965,740	7,348,222	7,752,374	8,178,755	8,626,587	9,103,159	9,103,159
Medical Ins. - Actives	1,277,000	1,131,000	1,491,000	1,593,000	1,792,000	2,028,000	2,306,900	2,616,279	3,019,921	3,382,312	3,768,189	4,242,772	4,751,904	4,751,904
Medical Ins. - Retirees	570,000	587,000	979,000	991,000	1,137,000	1,369,000	1,704,662	2,555,813	2,327,951	2,607,306	2,920,182	3,270,604	3,663,077	3,663,077
Indigent Services	0	641,541	742,954	814,622	1,054,393	1,515,236	1,794,552	2,740,848	3,175,000	3,333,760	4,081,733	4,500,117	4,725,116	4,725,116
Other PAF Expenses	3,069,000	2,170,459	2,292,146	2,470,378	2,696,607	2,858,764	2,856,794	3,263,811	3,687,365	4,081,733	4,285,620	4,600,117	4,725,116	4,725,116
Total Expenses	\$17,999,000	\$19,830,000	\$20,504,000	\$21,695,000	\$23,250,000	\$24,962,000	\$26,223,723	\$29,406,653	\$31,242,636	\$33,272,198	\$35,343,722	\$37,669,743	\$39,594,165	\$39,594,165
Surplus(Deficit)	\$2,250,000	\$2,502,000	\$4,309,000	\$4,484,000	\$2,468,000	\$1,394,000	\$835,845	(\$1,812,556)	(\$3,116,304)	(\$4,618,632)	(\$6,119,565)	(\$7,987,913)	(\$9,318,678)	(\$9,318,678)
Beginning PAF Balance		16,550,000	19,052,000	23,360,000	27,763,000	30,231,000	16,623,000	17,458,845	15,646,211	12,429,908	7,811,276	1,645,520	1,645,520	1,645,520
Transfer to General Fund		3,502,000	4,308,000	4,403,000	2,468,000	1,392,000	835,845	(1,812,556)	(3,116,304)	(4,618,632)	(6,119,565)	(7,987,913)	(9,318,678)	(9,318,678)
Ending PAF Balance		\$19,052,000	\$23,360,000	\$27,763,000	\$30,231,000	\$31,623,000	\$17,458,845	\$15,646,211	\$12,429,908	\$7,811,276	\$1,645,520	\$1,645,520	\$1,645,520	\$1,645,520
Probate Court Income and Expenses are on a Calendar Year and PAF expenses are on a Fiscal Year.														
Notes:														
1 - Year 2005 has actual expenses for the PAF and estimated expenses for the Probate Court.														
Retirees Health Insurance cost for 2005 includes a payment of \$ 477,285 for underpayment of prior years health insurance.														
Assumptions:														
Gross Receipts increase at a rate of 2% annually.														
Interest Income equals 1% of prior years ending fund balance.														
Court Staff Salaries increase at a rate of 3% annually.														
Other Court Expenses increase at a rate of 3% annually.														
Judges Compensation increases by 5.5% annually.														
Revised 11/28/05														
Source: Office of the Probate Court Administrator														

APPENDIX C

Probate Court Districts Grouped by Population of the District					
<i>Largest 20 Districts</i>	<i>21 - 40</i>	<i>41 – 60</i>	<i>61 - 80</i>	<i>81 - 100</i>	<i>Smallest 23 Districts</i>
1	2	3	4	5	6
Berlin	Cheshire	Bloomfield	Andover	Brooklyn	Ashford
Bridgeport	Derby	Branford	Avon	Burlington	Bethany
Bristol	East Hartford	Colchester	Bethel	Canton	Bozrah
Danbury	East Windsor	Darien	Brookfield	East Haddam	Canaan
Fairfield	Ellington	East Haven	Clinton	Essex	Cornwall
Greenwich	Enfield	Farmington	East Hampton	Granby	Deep River
Hamden	Glastonbury	Guilford	East Lyme	Griswold	East Granby
Hartford	Groton	Madison	Killingly	Haddam	Eastford
Manchester	Mansfield	Montville	Ledyard	Hebron	Hampton
Meriden	Naugatuck	New Canaan	Litchfield	Old Lyme	Harwinton
Middletown	New London	Newtown	New Fairfield	Old Saybrook	Kent
Milford	New Milford	No. Haven	New Hartford	Oxford	Killingworth
New Haven	Norwich	Plainfield	No. Branford	Portland	Lyme
Newington	Shelton	Ridgefield	Orange	Putnam	Marlborough
Norwalk	Southington	Simsbury	Plainville	Redding	No. Stonington
Stamford	Stratford	Southbury	Plymouth	Thomaston	Norfolk
Trumbull	Torrington	Stafford	Stonington	Thompson	Pomfret
Waterbury	Wallingford	Tolland	Suffield	Westbrook	Roxbury
West Hartford	Westport	Windham	Winchester	Woodbridge	Salem
West Haven	Woodbury	Windsor	Windsor Locks	Woodstock	Salisbury
					Saybrook
					Sharon
					Washington